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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/295,577	04/22/1999	RICHARD ARTHUR HALAVAIS		7340

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EXAMINER
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GILLIGAN, CHRISTOPHER L

ART UNIT	PAPER NUMBER
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3626

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/295,577	<b>Applicant(s)</b> HALAVAIS ET AL.	
	<b>Examiner</b> Luke Gilligan	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 11, 16, 17 and 24-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 11, 16-17, and 24-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/20/06 has been entered.

***Response to Amendment***

2. In the amendment filed 11/20/06, the following has occurred: claims 1, 24, and 30 have been amended. Now, Claims 1-4, 6, 11, 16-17, and 24-34 are presented for examination.

3. The Declaration under 37 CFR 1.132 filed 11/20/06 and 1/25/07 is insufficient to overcome the rejection of claims 1-4, 6, 11, 16-17, and 24-34 based upon 35 U.S.C. 103(a) as set forth in the last Office action because:

(A) The declarations presented in Exhibits B-G fail to establish a nexus with the claimed invention. In particular, each of the declarations presented in Exhibits B-G describe that the licensed product allows customers to view and select seats through browser. However, none of the claims recite the use of a web browser for selecting and viewing seats. To be given substantial weight in the determination of obviousness or nonobviousness, evidence of secondary considerations must be relevant to the subject matter as claimed, and therefore the examiner must determine whether there is a nexus between the merits of the claimed invention and the evidence of secondary considerations. *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 305 n.42, 227 USPQ 657, 673-674 n. 42 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986). In addition, it should be noted that evidence of licensing is a secondary

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consideration which must be carefully appraised as to its evidentiary value because licensing programs may succeed for reasons unrelated to the unobviousness of the product or process, e.g., license is mutually beneficial or less expensive than defending infringement suits); *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 USPQ 81 (Fed. Cir. 1986).

(B) The objective evidence of commercial success presented in Exhibit A fails to establish that the commercial success of the product was specifically derived from the claimed invention. Gross sales figures do not show commercial success absent evidence as to market share, *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985), or as to the time period during which the product was sold, or as to what sales would normally be expected in the market, *Ex parte Standish*, 10 USPQ2d 1454 (Bd. Pat. App. & Inter. 1988). In particular, the gross ticket sales figures presented in Exhibit A fail to provide any frame of reference to compare with what would otherwise be expected. Also, it is unclear whether these figures represent the total sales from each of the companies that licensed the product. If so, it is unclear whether these total figures are specifically attributable to the claimed invention.

(C) The declaration of Milford Skane alleges that others have copied the invention and that the decline in sales figures is a result of this copying. It should first be noted that no objective evidence of copying has been presented. Rather, the Skane declaration merely asserts that the decline in ticket sales was due to the alleged copying. However, more than the mere fact of copying is necessary to make that action significant because copying may be attributable to other factors such as a lack of concern for patent property or contempt for the patentees ability to enforce the patent. *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985). Furthermore, there is no evidence nor any assertion that the copying was of an identical product to the claimed invention. Alleged copying is not

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persuasive of nonobviousness when the copy is not identical to the claimed product, and the other manufacturer had not expended great effort to develop its own solution. *Pentec, Inc. v. Graphic Controls Corp.*, 776 F.2d 309, 227 USPQ 766 (Fed. Cir. 1985). See also *Vandenberg v. Dairy Equipment Co.*, 740 F.2d 1560, 1568, 224 USPQ 195, 199 (Fed. Cir. 1984) (evidence of copying not found persuasive of nonobviousness) and *Panduit Corp. v. Dennison Manufacturing Co.*, 774 F.2d 1082, 1098-99, 227 USPQ 337, 348, 349 (Fed. Cir. 1985), vacated on other grounds, 475 U.S. 809, 229 USPQ 478 (1986), on remand, 810 F.2d 1561, 1 USPQ2d 1593 (Fed. Cir. 1987) (evidence of copying found persuasive of nonobviousness where admitted infringer failed to satisfactorily produce a solution after 10 years of effort and expense).

4. In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

#### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-4, 6, 11, 16-17, and 24-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 1 recites the phrase "client node...having no dedicated resident software." It is unclear what specifically is excluded by this negative limitation. For example, a particular web browser software program is necessary for a client node to view a web site. Furthermore, is applicant intending limit the claim in such a way as to exclude all "dedicated resident software" present on the client node? Therefore, it is respectfully submitted that one of ordinary skill in the art could not ascertain what exactly the scope of the claim is based on this negative limitation.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-3, 6, 16-17, and 24-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helbling et al., U.S. Patent No. 5,797,126 in view of Kay, U.S. Patent No 6,223,166.

10. As per claim 1, Helbling teaches a method comprising: a) communicating on demand, from a central computer through a network to a device connected to the network information from a database populated by a multiplicity of entries denoting availability for a venue (see column 5, lines 38-40); b) displaying the information including a plurality of available individual seats at the venue such that an end user connected to the network can view the information on a client node unaffiliated with the central computer as an aid in determining a specific individual seat conforming to a need of the end user (see column 5, lines 46-48 and column 4, lines 35-38); c) providing over the network to the end user the capability of interactively selecting the specific individual seat from among the plurality of individual seats displayed (see column 5, lines 49-52); d) receiving from the end user a selection of the specific individual seat (see column 5, lines 49-52); e) accepting over the network from the end user a payment for the seat (see column 5, lines 54-55); f) returning over the network to the end user verification of the successful completion of the payment (see column 5, lines 56-61).

11. Although the central station of Helbling appears to function as a server and the network of central station and kiosks appears to function as a wide area network, Helbling does not

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*explicitly* teach that communication is performed with a server via a wide area network.

However, Kay teaches a wide area network (Internet) in which a client communicates with a server to remotely purchase tickets to an event (see column 3, lines 27-33). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate such a wide area network architecture into the system of Helbling. One of ordinary skill in the art would have been motivated to incorporate such a network architecture for the purpose of enhancing the ease of access and providing more widely available access to the information supplied by Helbling (see column 3, lines 16-22 of Helbling) through an Internet-based architecture as described by Kay.

12. As per claim 2, Helbling in view of Kay teach the method of claim 1 as described above. Helbling further teaches the seat sought is for a theater or theater type setting (see column 3, lines 41-45).

13. As per claim 3, Helbling in view of Kay teaches the method of claim 1 as described above. Helbling further teaches the seat sought is for a stadium type setting (see column 4, lines 7-9).

14. As per claim 6, Helbling in view of Kay teach the method of claim 1 as described above. Helbling further teaches a communication connection between the central computer and the end user includes one of a wire, a cable, and a telephone connection (see column 4, lines 59-64).

15. As per claim 16, Helbling in view of Kay teach the method of claim 1 as described above. Helbling further teaches a communication connection between the information server and the end user includes a wireless link (see column 7, lines 1-4).

16. As per claim 17, Helbling in view of Kay teach the method of claim 2 as described above. Helbling further teaches a communication connection between the central computer and the end user is wireless (see column 7, lines 1-4).

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17. As per claim 24, Helbling teaches a method comprising: receiving at a central computer a request for a venue from at least one client node remote from and unaffiliated with the central computer 4, lines 35-43); transmitting, responsive to the request, from the central computer an indication of specific availability including a representation of a plurality of specific individual seats available in the venue, the indication of specific availability directed to the client node (see column 4, lines 35-43); receiving at the central computer a specific indication of a client preference identifying a particular individual seat for purchase from the plurality of specific individual seats available (see column 4, lines 49-55); and removing the client preferences from any future indication of specific availability (see column 4, lines 49-55).

18. Although the central station of Helbling appears to function as a server, Helbling does not *explicitly* teach that communication is performed with a server. However, Kay teaches a wide area network (Internet) in which a client communicates with a server to remotely purchase tickets to an event (see column 3, lines 27-33). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate such a wide area network architecture into the system of Helbling. One of ordinary skill in the art would have been motivated to incorporate such a network architecture for the purpose of enhancing the ease of access and providing more widely available access to the information supplied by Helbling (see column 3, lines 16-22 of Helbling) through an Internet-based architecture as described by Kay.

19. As per claim 25, Helbling in view of Kay teach the method of claim 24 as described above. Helbling further teaches retrieving from a database an image showing a view from the seat indicated by the client preference (see column 7, lines 54-59); and transmitting the image to the client (see column 7, lines 54-59).

20. As per claim 26, Helbling in view of Kay teach the method of claim 24 as described above. Helbling further teaches the indication of specific availability includes a graphical



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representation of at least a portion of a seating chart for the venue, and wherein the graphical representation shows available seats in a first representation and previously sold seats in a second representation (see column 4, lines 35-43).

21. As per claim 27, Helbling in view of Kay teach the method of claim 24 as described above. Helbling does not explicitly teach the specific availability is transmitted as one of an HTML page and a java applet. However, Kay teaches an internet based ticket reservation system in which web pages and HTML documents are transmitted from a server to a client (see column 5, lines 17-39. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate such an Internet-based architecture into the system of Helbling for the reasons given above with respect to claim 24.

22. As per claim 28, Helbling in view of Kay teach the method of claim 26 as described above. Helbling further teaches linking the representation of a seat to an image of a view from that seat (see column 4, lines 43-48).

23. As per claim 29, Helbling in view of Kay teach the method of claim 24 as described above. Helbling further teaches accepting payment information at the central computer sufficient to permit access to the specific client preference (see column 4, lines 49-55); conducting an electronic payment transaction (see column 4, lines 49-55); and providing an electronic receipt (see column 4, lines 56-58).

24. As per claim 30, Helbling teaches a method comprising: requesting information about a venue across a network from a client node to be supplied by an unaffiliated central computer node (see column 5, lines 38-40); receiving an indication of available individual seats in the venue for purchase at the client node, the indication including a representation of a plurality of available individual seats (see column 5, lines 41-49); selecting by the user from the plurality of individual seats available a specific seat for purchase (see column 5, lines 50-53); and receiving

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an indication nthat the specific seat has been reserved through the central computer node (see column 5, lines 54-61).

25. Although the central station of Helbling appears to function as a server and the network of central station and kiosks appears to function as a wide area network, Helbling does not *explicitly* teach that communication is performed with a server via a wide area network.

However, Kay teaches a wide area network (Internet) in which a client communicates with a server to remotely purchase tickets to an event (see column 3, lines 27-33). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate such a wide area network architecture into the system of Helbling. One of ordinary skill in the art would have been motivated to incorporate such a network architecture for the purpose of enhancing the ease of access and providing more widely available access to the information supplied by Helbling (see column 3, lines 16-22 of Helbling) through an Internet-based architecture as described by Kay.

26. As per claim 31, Helbling in view of Kay teach the method of claim 30 as described above. Helbling further teaches the indication of specific availability includes a graphical representation of at least a portion of a seating chart for the venue, and wherein the graphical representation shows available seats in a first representation and previously sold seats in a second representation (see column 4, lines 35-43).

27. As per claim 32, Helbling in view of Kay teach the method of claim 31 as described above. Helbling further teaches selecting comprises clicking on a desired seat (see column 4, lines 25-31).

28. As per claim 33, Helbling in view of Kay teach the method of claim 32 as described above. Helbling further teaches receiving an image of a view from the desired seat responsive to the clicking (see column 4, lines 43-46).

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29. As per claim 34, Helbling in view of Kay teach the method of claim 30 as described above. Helbling further teaches supplying payment information for the specific seat (see column 4, lines 49-55); and receiving an electronic receipt sufficient to permit access to the seat (see column 4, lines 56-58).

30. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Helbling et al., U.S. Patent No. 5,797,126 in view of Kay, U.S. Patent No 6,223,166 and further in view of Walker et al., U.S. Patent No. 5,897,620.

31. As per claim 4, Helbling in view of Kay teach the method of claim 1 as described above. Helbling does not explicitly teach that the seat sought is for an airplane or airliner. However, network-based airline seat reservation systems are old and well known in the art as evidenced by Walker (see column 2, lines 43-53). It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the system of Helbling to enable airline seat reservation. One of ordinary skill in the art would have been motivated to expand the system in such a manner for the purpose of enhancing the functionality and purchasing capabilities of the up-to-date and immediate access to ticket purchases of Helbling (see column 3, lines 31-37 of Helbling).

32. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Helbling et al., U.S. Patent No. 5,797,126 in view of Kay, U.S. Patent No 6,223,166 and further in view of Thomas et al., U.S. Patent No. 6,301,574.

33. As per claim 11, Helbling in view of Kay teach the method of claim 1 as described above. Helbling does not explicitly teach a communication connection between the central computer and the end user includes a satellite link. However, such a communication

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connection is old and well known in the art as evidenced by Thomas (see column 4, lines 18-26). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate such a communication link. One of ordinary skill in the art would have been motivated to incorporate such a communication link for the purpose of enhancing the ease of access and providing more widely available access to the information supplied by Helbling (see column 3, lines 16-22 of Helbling).

### ***Response to Arguments***

34. In the remarks filed 11/20/06 and 1/25/07, Applicants argue in substance that the declarations and evidence presented under 37 CFR 1.132 are sufficient to overcome the obviousness rejections under 35 U.S.C. 103(a). In response to Applicants arguments, the Examiner respectfully submits that when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

### ***Conclusion***


35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luke Gilligan whose telephone number is (571) 272-6770. The examiner can normally be reached on Monday-Friday 8am-5:30pm.

36. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571) 272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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37. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

3/19/07

  
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